A.F.R.

21-02-2006

(83)

(84)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

WRIT PETITION NO.699 OF 2006

O R D E R

POST IT FOR PRONOUNCEMENT

OF ORDER ON: **21/02/2006**

Sd/-
Chief Justice

A.F.R.

21-02-2006

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK

WRIT PETITION NO.669 OF 2006

PETITIONER Mahesh Das Ratre, S/o Late Shri Baniyadas Ratre, Aged about 44 years, R/o Ward No.8, Satnami Para, Gandai, Tahsil: Chhuikhadan, District-Rajnandgaon (CG)

Versus

RESPONDENTS

1. State of Chhattisgarh Through the Secretary, Department of Agriculture, DKS Bhawan, Raipur (CG).
2. The District Collector-cum-District Election Officer, District Rajnandgaon (CG).
3. Returning Officer, (Mandi),/Sub Divisional Officer, Khairagarh, District-Rajnandgaon (CG).
4. Jivan Das Ratre S/o Shri Jitan Das, R/o Gandai Panderiya, Tahsil Chhuikhadan, District-Rajnandgaon (CG).

Present : Shri P. Diwakar, Sr. Advocate with Shri P.R. Patankar, counsel for the petitioner.

Shri Prashant Mishra, Addl. Advocate General with Shri Utkarsha Verma, Dy. Govt. Advocate, for the State of C.G.

Shri Anoop Majumdar, counsel for respondent No.4.

O R D E R

(Passed on 21st February, 2006)

The election of the Krishi Upaj Mandi, District Rajnandgaon was notified vide notification dated 30-12-2005 of the District Collector-cum-District Election Officer, Rajnandgaon, the second respondent herein, for election of the Chairman, Vyapari Pratinidhi and Krishak Pratinidhi. The petitioner along with four other candidates contested for the post of

Chairman of Krishi Upaj Mandi for Mandi Samiti No.29 Gandai, District Rajnandgaon (C.G.). On 23-1-2006, the elections were held and the petitioner was declared elected by issuing Form-28 by the Returning Officer, the third respondent herein. Jivan Das Ratre, the fourth respondent herein, being aggrieved by the election of the petitioner as Chairman of Krishi Upaj Mandi Samiti No.29 Gandai, submitted an application to the third respondent - Returning Officer on 25-1-2006 at 5:50 P.M. alleging that as per his information, at Booth No.32, he secured 70 votes and one Shri Ghana Ram secured 4 votes, but, at the time of tabulation, 70 votes were shown in the account of said Ghana Ram and 4 votes were shown in his account. The fourth respondent contended that if the aforesaid mistake is corrected, he would win the election by 6 votes. A copy of the application dated 25-1-2006 was also sent to the second respondent herein.

(2) On 31-1-2006, a notice was issued from the office of the second respondent to the petitioner directing him to remain present on 3-2-2006 at 11 A.M. for hearing otherwise *ex parte* proceedings would be drawn against him. In the said notice, it is stated that as per the application received from the fourth respondent, a report was called from the third respondent – Returning Officer and as per the report submitted by the third respondent, it was found that during the tabulation, the name of the candidate Ghana Ram is shown at Serial No.4 and the name of the fourth respondent is shown at Serial No.3 and because of this, the number of votes they secured were also wrongly mentioned. The petitioner appeared before the second respondent, as directed above, and filed his reply stating that on 24-1-2006, the petitioner was declared elected as Chairman of Krishi Upaj Mandi Samiti No.29 Gandai and certificate to that

effect was issued to him in From-28. The petitioner alleged that the fourth respondent made the application before the third respondent – Returning Officer on 25-1-2006 as an after-thought, because, the fourth respondent was also present along with the other candidates when the tabulation was done on 24-1-2006 and he did not raise any objection at that time. The petitioner also stated that the report of the Returning Officer was not supplied to him. The petitioner also contended that Rule 81 of the Krishi Upaj Mandi (Samiti Ka Nirvachan) Rules, 1997 (**for short 'the Rules'**) does not confer any power or authority upon the District Election Officer to open any envelope containing counted ballot papers, or to direct recounting of votes. The petitioner also contended that if the report of the Returning Officer was made available to him, he would have answered whether there was any discrepancy in making entries during the tabulation of Booth No.32. In addition to his reply, the petitioner also submitted his written arguments. The second respondent, having considered the reply of the petitioner, passed the impugned order on 4-2-2006 for correction of Form-24 and Form-26 as also Form-28, if any necessity arises. The petitioner being aggrieved by the above order of the second respondent has preferred this writ petition.

(3) I have heard Shri P. Diwakar, learned Senior Counsel for the petitioner, Shri Prashant Mishra, learned Addl. Advocate General for respondents 1 to 3 and Shri Anoop Majumdar, learned counsel for respondent No.4.

(4) Shri Prashant Mishra, learned Additional Advocate General, as directed by this Court on 14-2-2006, at the time of hearing, made available to the Court the original records.

(5) Shri P. Diwakar, learned Senior Counsel contended that at the time of tabulation process on 24-1-2006 culminating in the preparation of Form-24, the petitioner and fourth respondent were personally present along with their agents, but the fourth respondent did not raise any objection to the entries made in Form-24 with regard to the Booth No.32. It was pointed out by Shri P. Diwakar that there were totally 86 Booths and the name of Ghanaram was at Sr. No.3 and the name of fourth respondent was at Sr. No.4 in Form-23 with regard to all Booths except Booth No.32. Furthermore, in Form-24 also with regard to all Booths, the name of Ghanaram is shown at Sr. No.3 and the name of the fourth respondent at Sr. No.4. Form-24 of Booth No.32 clearly shows that Ghanaram secured 70 votes and the fourth respondent secured only 4 votes from that Booth. According to Shri Diwakar, if there was any mistake, the mistake related to interchange of the names of Ghanaram and fourth respondent and not with regard to the number of votes they secured. It was next contended by Shri Diwakar that in preparation of Form-24, there was no arithmetical or clerical mistake and, therefore, the order made by the second respondent under Rule 81 of the Rules is one without authority of law. Shri Diwakar contended that election result was declared and certificate in Form-28 was issued and therefore, the only remedy available to the fourth respondent was to file an election petition as provided under Section 66-A of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972 (**for short 'the Adhiniyam'**). It was contended that the dispute whether Ghanaram secured 70 votes or the fourth respondent secured 4 votes or vice-versa could be decided only on the basis of evidence that may be adduced by the parties before the Election Tribunal. It was pointed out that the tabulation was done till 12.00 O'clock on 24-1-2006 and the result was declared at about 4:00 P.M. on that day and

thereafterwards Form-28 was issued to the petitioner, but, at no stage any objection was raised by the fourth respondent. The fourth respondent as an afterthought and after the office hours at 5:50 P.M. submitted his application on 25-1-2006 to the third respondent – Returning Officer. Shri Diwakar drawing the attention of the Court to what is stated in paragraph 6.5 of the writ petition, would contend that the application of the fourth respondent was entertained by the respondents to favour him, because, he belongs to the Bharatiya Janata Party, a party in power in the State. Lastly, Shri Diwakar would contend that under no circumstance, the second respondent has power under Rule 81 of the Rules to correct Form-24, even if he finds any clerical or arithmetical mistake or error in Form-24.

(6) Shri Prashant Mishra, learned Additional Advocate General while supporting the impugned order of the second respondent, would highlight that the counting of the votes was done on 23-1-2006 and after the completion of the counting, Form-23 with regard to each booth was given to all the candidates and/or to their agents in presence of all and as per Form-23, Ghanaram secured only 4 votes whereas the fourth respondent got 70 votes in Booth No.32 and at that time, the petitioner nor anyone else disputed the correctness of the votes shown against the names of Ghanaram and/or the fourth respondent and if that is the undisputable position, while preparing Form-24 with regard to Booth No.32, since the number of votes secured by Ghanaram is wrongly shown against the name of the fourth respondent and the votes secured by the fourth respondent against the name of Ghanaram, it cannot be said that that mistake is not clerical or arithmetical mistake or error so as to confer power on the second respondent to correct the same by virtue of the power conferred under Rule 81 of the Rules. Shri Prashant Mishra would

contend that though there is no reference to Form-24 in Rule 81, since Form-26 has to be issued on the basis of the result-sheet compiled in Form-23 and Form-24 in terms of Rule 78 (1)(b) and since it is the power of the second respondent to correct Form-26 also by virtue of the power under Rule 81, non-mentioning of Form-24 separately in Rule 81 would not mean that the second respondent has no power to correct Form-24. Meeting the contention of Shri Diwakar that the petitioner was not supplied with copy of the report of the Returning Officer would contend that as per the order-sheet dated 3-2-2006 maintained by the second respondent, the petitioner was allowed to inspect the original report of the Returning Officer and, therefore, it could not be said that the impugned order was made in violation of the principles of natural justice.

(7) Shri Anoop Majumdar learned counsel appearing for respondent No.4 adopted the arguments of Shri Prashant Mishtra learned Additional Advocate General. In Addition, he would contend that since under sub-Section (2) of Section 66-A of the Adhiniyam an election petition has to be filed within thirty days from the date on which election in question was notified and since in this case the election of the fourth respondent was notified in the official Gazette by the Collector under sub-Section (9) of Section 12 of the Adhiniyam, it is for the petitioner to file election petition under Section 66-A of the Adhiniyam and not for the fourth respondent.

(8) Having heard the learned counsel for the parties, the only question that arises for the consideration of the Court is whether any ground was made out to enable the second respondent to invoke powers conferred under Rule 81 of the Rules and to pass the impugned order and whether the impugned order is otherwise suffers from any material

irregularity or illegality warranting interference of this Court under Article 226 of the Constitution.

(9) Chapter IX of the Rules deals with counting of votes. Rules 70, 71, 72, 73 are not relevant for our purpose. Sub-rule (2) of Rule 74 provides that after the counting of votes in respect of the polling station has been completed, the Returning Officer or such other officer authorized by him, shall make the entries in result sheet in Form-22 for members and result sheet in Form-23 for Chairman and announce the total number of votes polled by each candidate. Sub-rule (5) of Rule 77 provides that after the total number of votes polled by each candidate has been announced under Sub-rule (2) of Rule 74, the Returning Officer or such other officer authorized by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter. Sub-rule (7) of Rule 77 provides that the result sheets in Form-22 and Form-23 for Member and Chairman respectively, prepared by such officers as are authorized by the Returning Officer, shall be submitted by them, in separate envelops to the Returning Officer for compilation and tabulation of votes polled by each candidate. Sub-rule (8) of Rule 77 provides that the Returning Officer on receipt of result sheets under sub-rule (7) shall enter or cause to be entered the total number of votes by each candidate for the office of Chairman Mandi Committee at each polling station of the concerned constituency in subsequent part or parts in Form-24 respectively and complete and sign the result sheet. Sub-rule (1) of Rule 78 provides that the Returning Officer shall prepare a return of election to the office of (a) Member in Form-25 on the basis of result sheet compiled in Form-22 and (b) Chairman in Form-26 on the basis of the result sheet compiled in Form-23 and Form-24. Sub-rule (2) of Rule 78 provides that

after preparing the return the Returning Officer shall declare the candidate elected who has received the largest number of valid votes. Rule 80 provides that as soon as may be after a candidate has been declared elected under Rule 78 or Rule 79, the Returning Officer shall grant to such candidate a certificate of election in Form-28 and obtain from the candidate an acknowledgment of its receipt duly signed by him. Then comes Rule 81 which is material for the purpose of decision-making. Rule 81 reads as follows:

> **"81. Powers of District Election Officer to correct clerical or arithmetical mistakes or errors.-** (1) The District Election Officer may at any time but not later than 15 days from the day of declaration of result under rule 78 on a report by the Returning Officer, correct, by an order any clerical or arithmetical mistake or error in the result sheet in Form 22, 23 or in the return of election in Form 25 or 26 as the case may be:
>
> Provided that no correction or amendment shall be made except after giving a notice to all contesting candidates from the constituency in question, about the date, time and place for taking up the matter for such correction.
>
> (2) An order passed by the District Election Officer under sub-rule (1) shall be in writing and contain reasons therefor and a corrected copy of the return of election in Form 25 or 26 as the case may be, duly signed and certified by the District Election Officer shall be sent to the Returning Officer for grant of certificate of election to the candidate declared elected as a result of such correction.
>
> (3) Nothing in sub-rule (1) shall confer any power or authority upon the District Election Officer to open any envelope containing counted ballot papers or to direct re-counting of votes.

(4) The certificate of election in Form 28 issued under rule 80, if already granted by the Returning Officer to a candidate before an order is passed by the District Election Officer under sub-rule (1), shall be deemed to have been recalled and cancelled".

(10) Article 243-O of the Constitution contains a bar to interference by Courts in electoral matters. It provides that notwithstanding anything in the Constitution, the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K, shall not be called in question in any court. Furthermore, it provides that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. Clause (b) of Article 243-O ousts the jurisdiction of the Courts. The word election occurring in Clause (b) of Article 243-O comprehends within its ambit, all matters arising between commencement of the polling and the final election. In **Election Commission Vs. Saka Venkata Subba Rao**[1] and **Mohinder Singh Gill Vs. Chief Election Commissioner**[2], the Supreme Court dealing with the bar to interference by Courts in electoral matters contained in Article 329 has held that *'election'* means the *entire* process culminating in a candidate being *declared* elected and is not confined to the final result. In view of the bar contained in clause (b) of Article 243-O and the binding judgments of the Supreme Court that once election results are declared, the aggrieved parties should work out legal remedies provided under the statute by way of election petition. In this context, it

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1. (1953) SCR 1144 : AIR 1953 SC 210
2. AIR 1978 SC 851 : (1978) 1 SCC 405

needs to be noticed that the right to elect or to be elected, though provided for by the Constitution or by any statute, is not a fundamental right nor even a common law right. It is a right created by statute and is entirely governed by statute; so also is the right to dispute an election. In other words, an election petition for challenging an election is, therefore, not an action at common law or equity. In **Jyoti Basu Vs. Debi Ghosal**[3], **Charan Lal Sahu vs. Nandkishore Bhatt**[4] **and Jagannath Vs. Jaswant Singh**[5] , it was held that an election petition for challenging an election is not an action at common law or equity. In the absence of a statutory provision laid down by statute, no right to dispute an election can be derived from general principles of equity or natural justice.

(11) Although the above is the position, the statute can provide for a particular mode or method to challenge the election. Rule 81 has a statutory force and it confers the power on the District Election Officer to correct any clerical or arithmetical mistake or error in the result sheet in Form-22, Form-23 or in the return of election in Form-25 or Form-26, as the case may be, at any time, but not later than fifteen days from the day of declaration of results under Rule 78 of the Rules on a report by the Returning Officer. In other words, even after the declaration of the result under Rule 78, it is permissible for the District Election Officer to correct any clerical or arithmetical mistake or error, as pointed out above, on the basis of a report by the Returning Officer. Therefore, it cannot be said that since the election of the petitioner was declared under Rule 78 on 23-1-2006, though there is some clerical or arithmetical mistake or error in the

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3. AIR 1982 SC 983 : (1982) 1 SCC 691 : 1982 (3) SCR 318
4. AIR 1973 SC 2464 : (1973) 2 SCC 530 : 1974 (1) SCR 294
5. AIR 1954 SC 210 : 1954 SCR 892.

result sheet in Form-22 or Form-23 or in the return of the election in Form-25 and Form-26, the District Collector has no power to correct such clerical or arithmetical mistake or error and the aggrieved party like the fourth respondent should resort to the remedy only by way of election petition, as provided under Section 66-A of the Adhiniyam. But, the question is whether the correction now made by the second respondent under Rule 81 of the Rules could be categorized as a clerical or arithmetical mistake or error to attract the provisions of Rule 81. It is needless to state that the District Election Officer by virtue of power conferred under Rule 81 could correct only any clerical or arithmetical mistake or error and not other errors or mistakes, even assuming that there are such other mistakes or errors.

(12) In order to answer the above question, the factual matrix of this case is required to be noticed. According to the Returning Officer, in Form-23 the votes secured by the fourth respondent and Ghanaram with regard to Booth No.32 are correctly shown, but, when Form-24 was prepared a mistake had crept in by showing 4 votes to the credit of the fourth respondent and 70 votes to the credit of Ghanaram and, therefore, the second respondent – District Election Officer was well within his power conferred under Rule 81 to correct the mistake/error. It needs to be noticed, at the threshold, that it is not a simple clerical or airthmetical mistake or error. It is alleged by the petitioner that on 23-1-2006 the counting of the votes was done in the presence of the candidates and/or their agents and result of the election was declared under Rule 78 on the basis of the result sheets compiled in Form-23, Form-24 and Form-26 was prepared and subsequently the petitioner was also granted certificate of election in Form-28 under Rule 80 of the Rules. It is the specific case of

the petitioner that the fourth respondent or any other candidate who contested the election including Ghanaram did not object to the counting of votes or making entries in various forms either on 23-1-2006 or on 24-1-2006. It is further alleged by the petitioner that the fourth respondent made the application to the Returning Officer only on 25-1-2006, that too, after the office hours at 5:50 P.M. making the allegation that the votes secured by the petitioner and Ghanaram in Booth No.32 are not properly shown in Form-24. In this context, it is also relevant to notice that in para 6.5 of the writ petition, the petitioner has alleged that the Returning Officer and the District Election Officer entertained the application of the fourth respondent in order to favour him, because, the fourth respondent belongs Bharatiya Janata Party, which is a ruling party. The records placed before the Court would not satisfactorily show that all the relevant prescribed forms were prepared in the presence of all the candidates and/or their agents. The dispute between the parties bristles with disputed facts. The truth or otherwise of the complaint made by the fourth respondent in his application dated 25-1-2006 submitted to the Returning Officer and the District Election Officer could be established only after a full-fledged trial of an issue that arises out of the pleadings/contentions of the parties or may be by opening envelope containing counted ballot papers with regard to the Booth No.32 and recounting the same. I do not think that the second respondent – District Election Officer was justified or acted legally in treating the dispute between the parties as the one analogous to the one arising out of a clerical or arithmetical mistake or error.

(13) The basis of the provision under Rule 81 of the Rules is founded on the maxim "*actus curiae neminem gravabit*" i.e. an act of court or a judicial Forum shall prejudice no one. Therefore, an unintentional

mistake of the Court or judicial Forum which may prejudice the cause of any party must be and alone could be rectified. The exercise of this power contemplates the correction of mistakes by the Court or judicial Forum of its ministerial actions and does not contemplate passing of effective judicial or quasi-judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal or any other judicial or quasi-judicial Forum cannot vary the terms of the judgments, decrees and orders earlier passed except by means of review, if specifically provided in a statute and subject to the conditions or limitations provided therein. Therefore, the power under Rule 81 of the Rules is neither to be equated with the power of review nor can be said to be akin to review. The corrections contemplated in Rule 81 are of correcting only accidental omissions or exercise and not of omissions and exercise which might have been committed by the Returning Officer while preparing the result-sheets in Form-22, Form-23, Form-25 and Form-26. The omission sought to be corrected which goes to the merits of the case is beyond the scope of power conferred on the District Election Officer under Rule 81 and in such cases, the only remedy available to the aggrieved party is to file election petition under Section 66-A of the Adhiniyam.

(14) The Supreme Court in **Sooraj Devi Vs. Pyare Lal**[6] held that a clerical or arithmetical error is an error occasioned by an accidental slip or omission of the Court. It represents that which the Court never intended to say. It is an error apparent on the face of the record and does

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6. AIR 1981 SC 736

not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing, for example, a mistake of a copyist in copying; a mistake in transcribing a written instrument; the mistake of a clerk in writing; error made by a clerk or by a transcriber. Furthermore, it needs to be noticed that the error contemplated in Rule 81 is a *bona fide* clerical or arithmetical error. The District Election Officer under the cover or garb of the power conferred under Rule 81 cannot modify, alter or add to the terms of his original judgment, opinion or order. Rule 81 of the Rules is based on two principles, namely, the act of the Election Officer should not prejudice any party and he has a duty to see that the records are true and present the correct state of affairs. An arithmetical mistake is a mistake in calculation, while a clerical mistake is a mistake of writing or typing error from an accidental slip or omission or an error due to careless mistake or omission made unintentionally and unknowingly. A matter, requiring elaborate arguments or evidence on question of facts or law, for its discovery, cannot be categorized as an error arising out of accidental slip or omission in order to bring it within the scope of Rule 81. In such cases, the only remedy open to the party aggrieved would be to appeal. The power of rectification of clerical or arithmetical errors does not empower the Election Officer to have a second thought over the matter.

(15) Keeping in mind the scope and parameters of the power conferred on the District Election Officer under Rule 81 and the principles which regulate that power as noted above and having regard to the facts and circumstances of this case and the pleadings of the parties before the District Election Officer, I have no hesitation to hold that the District Election Officer in passing the impugned order has exceeded his

jurisdiction conferred under Rule 81 of the Rules and, therefore, the impugned order is liable to be quashed.

(16) If the impugned order passed by the second respondent under Rule 81 is quashed, it is trite that the election of the petitioner as the Chairman of the Krishi Upaj Mandi for Mandi Samiti No.29 Gandai, District Rajnandgaon (C.G.) would stand and he will be entitled to function as the Chairman of the said Mandi Samiti. Therefore, it is for the fourth respondent, if he is aggrieved by the election of the petitioner, to work out his legal remedy by way of election petition under Section 66-A of the Adhiniyam. But, it is the contention of Shri Anoop Majumdar learned counsel appearing for the fourth respondent that since the election of the fourth respondent as Chairman of Krishi Upaj Mandi Samiti No.29 Gandai is already notified in the official Gazette by the Collector as required under sub-Section (9) of Section 12 of the Adhiniyam and the election of the petitioner to that post is not notified in the official Gazette under sub-Section (9) of Section 12 of the Adhiniyam, it is for the petitioner to work out his legal remedy by way of election petition under Section 66-A of the Adhiniyam and not for the fourth respondent. This argument is built upon the limitation prescribed under sub-Section (2) of Section 66-A of the Adhiniyam which provides that no election petition shall be admitted unless it is presented within thirty days from the date on which the election in question was notified thereby meaning notified under sub-Section (9) of Section 12 of the Adhiniyam. The above contention of the learned counsel is totally hollow and does not merit acceptance. If the impugned order of the District Election Officer is nullified by writ of *certiorari, it* is trite, the election of the petitioner as Chairman of Krishi Upaj Mandi Samiti No.29 Gandai stands and the election of the fourth respondent as

Chairman of the Krishi Upaj Mandi Samiti No.29 Gandai notified in the official Gazette under sub-Section (9) of Section 12 of the Adhiniyam falls to the ground. Secondly, the argument of the learned counsel overlooks the fact that under sub-Section (1) of Section 66-A of the Adhiniyam, an election can be called in question within the prescribed limitation and it does not state that an election could be called in question only after the notification contemplated under sub-Section (9) of Section 12 of the Adhiniyam is published in the official Gazette by the Collector. Sub-Rule (2) of Rule 78 of the Rules provides that after preparing the return, the Returning Officer shall declare the candidate elected who has received largest number of valid votes. An election begins with the issuance of election notification and comes to an end with the declaration of the result. When an election of a candidate is declared under sub-Rule (2) of Rule 78, election process comes to an end. Issuance of certificate of election under Rule 80 in Form-28 and issuance of notification with regard to the election of Chairman and/or Vice Chairman in the official Gazette by the Collector in terms of sub-Section (9) of Section 12 of the Adhiniyam are undeniably the events subsequent to the event of declaration of election of the petitioner under sub-Rule (2) of Rule 78 of the Rules. Once a candidate is declared elected under sub-Rule (2) of Rule 78, election of such candidate could be assailed only by way of election petition under Section 66-A of the Adhiniyam. Looking from any angle, the contention of Shri Anoop Majumdar learned counsel for the fourth respondent is totally meritless.

(17) In the light of the views I have taken as above, there is no need for me to consider the contention of Shri P. Diwakar that the District Election Officer has to exercise power conferred under Rule 81 of the

Rules only on a report by the Returning Officer and, therefore, he ought not to have passed the impugned order on a complaint made by the fourth respondent, and that non-furnishing a copy of the report of the Returning Officer prejudiced the petitioner and that the respondents 2 and 3 entertained the application of the fourth respondent to favour him because he belongs to Bharatiya Janata Party, a party in power.

(18) In the result and for the foregoing reasons, the writ petition is allowed and the impugned order dated 4-2-2006 (Annexure-P/8) passed by the second respondent and all other further proceedings, if taken, thereto are quashed. In the facts and circumstances of the case, the parties shall bear their respective costs in this writ petition.

Sd/-
Chief Justice

Brajesh*